

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, ex rel.
W.A. DREW EDMONDSON, in his capacity as
ATTORNEY GENERAL OF THE STATE OF
OKLAHOMA, and OKLAHOMA SECRETARY
OF THE ENVIRONMENT C. MILES TOLBERT,
in his capacity as the TRUSTEE FOR NATURAL
RESOURCES FOR THE STATE OF OKLAHOMA,

Plaintiffs,

vs. No. 05-CV-0329 GFK-SAJ

TYSON FOODS, INC., TYSON POULTRY, INC.,
TYSON CHICKEN, INC., COBB-VANTRESS, INC.,
AVIAGEN, INC., CAL-MAINE FOODS, INC.,
CAL-MAINE FARMS, INC., CARGILL, INC.,
CARGILL TURKEY PRODUCTION, LLC,
GEORGE'S, INC., GEORGE'S FARMS, INC.,
PETERSON FARMS, INC., SIMMONS FOODS, INC.,
and WILLOW BROOK FOODS, INC.,

Defendants.

VIDEO DEPOSITION OF DANIEL JOSEPH PARRISH
TAKEN ON BEHALF OF THE DEFENDANTS
ON JANUARY 14, 2008, BEGINNING AT 9:37 A.M.
IN OKLAHOMA CITY, OKLAHOMA

Videographer: Stephanie Britton
Reported by: Lana L. Phillips, CSR, RPR

1 Cal-Maine defendants.

2 MR. TUCKER: John Tucker for
3 Cargill.

4 MS. GRIFFIN: Jennifer Griffin for
5 Willow Brook Foods.

6 THE VIDEOGRAPHER: The court
7 reporter will now swear the witness.

8 DANIEL JOSEPH PARRISH,
9 having been first duly sworn, deposes and says in
10 reply to the questions propounded as follows:

11 DIRECT-EXAMINATION

12 BY MR. McDANIEL:

13 Q Good morning, sir.

14 A Good morning.

15 Q Would you state your full name,
16 please.

17 A Daniel J. Parrish, P-a-r-r-i-s-h.

18 Q What does the J stand for?

19 A Joseph.

20 Q Okay. Sir, what is your employment?

21 A I'm employed with the Oklahoma
22 Department of Agriculture, Food, and Forestry.

23 Q What's your title or your position?

24 A I am title of the Agricultural
25 Environmental Management Services division,

1 the poultry company's standpoint, there would be
2 a distinction that you've referred to.

3 From our standpoint, again, from the
4 rules and regulations, do not see that
5 distinction.

6 Q (BY MR. McDANIEL) Well -- okay. The
7 -- in the case of a contract grower, if a
8 contract grower owns and operates registered --
9 excuse me.

10 If a contract grower owns and
11 operates the poultry feeding operation, it is
12 that contract grower who is required to register
13 with your division, not that contract grower's
14 integrator; right?

15 A If the contract grower you're
16 referring to is the owner of the operation that
17 produces more than ten tons of waste per year,
18 then they're required to register with the AEMS
19 division at the Oklahoma Department of
20 Agriculture, Food, and Forestry.

21 Q And as part of that registration
22 process, they're to let your division know who
23 they contract with -- in other words, give the
24 identity of the integrator?

25 A I believe it's item number 4 on the

1 three-page registration application they submit
2 to us, on the first page, that integrator is
3 required to be listed.

4 Q All right. The integrator only has
5 to register with your division, under the Act, if
6 it is the owner or operator of the facility;
7 right?

8 A Yes. That is correct.

9 Q All right. Let's look -- continue
10 on the list of items that your division is to
11 receive on an application for registration.

12 B.5 is: "A diagram or map and legal
13 description showing the geographical location of
14 the facility, on which the perimeters of the
15 facility are designated."

16 Can you tell me why your division
17 needs that information?

18 A Well, the quick answer is because
19 that's what the Oklahoma Poultry Feeding
20 Operations Act says.

21 Q That's a quick answer, but what is
22 the practical reason why you need that
23 information?

24 A One, so that the Department, in
25 order to enforce rules and regulations, need to

1 let's move down to Title 35, Section 17-5-5, the
2 specific requirements for animal waste management
3 plans.

4 According to the regulations, number
5 (1), a plan has to include: "A description of
6 the poultry waste handling procedures and
7 availability of equipment and type of equipment
8 to be used"; correct?

9 A Yes. That's one of the minimum
10 requirements.

11 Q All right. Let's -- and just so we
12 haven't lost the context here, every registered
13 poultry feeding operation in the state of
14 Oklahoma is required to either possess an animal
15 waste management plan or be in the process of
16 obtaining one; correct?

17 A Either have an animal waste
18 management plan or prove that they've applied for
19 an animal waste management plan.

20 Q All right. And that's what we're
21 going through, the requirements for those plans.

22 Number (2), the plan must include
23 the "calculations and assumptions used for
24 determining land application rates"; correct?

25 A Yes. In 35:17-5-5, that you're

1 reading, (a)(2), yes.

2 Q All right. Words referring to land
3 application, that's talking about poultry waste;
4 right?

5 A Yes. Correct.

6 Q All right. Number (3): "All
7 nutrient analysis data, including soil and
8 poultry waste testing"; correct?

9 A Yes.

10 Q All right. So in other words, in
11 layman's terms, you've got to take samples of
12 soil where it's going to be applied and you have
13 to take samples of the poultry wastes that you're
14 intending to apply; correct?

15 A Yes. That is correct.

16 Q All right. Number (4): "Legal
17 description of the lands to be used by an
18 operation for land application"; correct?

19 A Yes, that is correct.

20 Q All right. Is one of the objectives
21 of this program that your division will know
22 where poultry waste is being land-applied in the
23 state of Oklahoma?

24 A That is one of the objectives of
25 that. And then we rely upon what is submitted to

1 us.

2 Q All right. Next page, Subsection
3 (5), animal waste management plan will include a
4 "soils map with description and type or series."

5 Did I read that correctly?

6 A Yes, you did.

7 Q Can you tell me why that is a
8 relevant issue for a animal waste management
9 plan?

10 A Different soil types will be
11 beneficial and/or harmful in what happens to that
12 poultry waste as it's applied to that field, so
13 the type of soil is very instrumental in what
14 happened to the waste that is applied to those
15 fields.

16 Q So an animal waste management plan
17 is developed to be site specific. And what I
18 mean by that, it's developed for that operation,
19 those specific lands included within the scope of
20 the plan; is that right?

21 A That is correct.

22 Q And so in order to provide
23 appropriate guidance on waste management, one of
24 the issues is to know the soils that are on those
25 specific lands where the waste may be

1 land-applied; correct?

2 **A** Yes.

3 **Q** All right. Let's look at --
4 continue to Subsection (7): "The procedures
5 documented in the animal waste management plan
6 shall ensure that the handling and utilization of
7 poultry waste complies with the following
8 requirements" -- and then it continues with a
9 list. (A) is: "Adequate poultry waste storage
10 shall be provided."

11 We've -- I think we've already
12 talked about the basic issue there, that you
13 can't store it exposed to rainfall or surface
14 water; is that correct?

15 **A** Yes. In the second sentence of (A)
16 you're reading: "Poultry waste shall not be
17 stored without adequate protection from rainfall
18 and runoff" addresses that.

19 **Q** All right. Let's go to (B):
20 "Poultry waste shall not be applied to land where
21 the ground is saturated or during rainfall
22 events. Poultry waste shall not be applied to
23 land when the ground is frozen or snow-covered,
24 except in conformance with animal waste
25 management plan."

1 Did I read that correctly?

2 **A** Yes, sir.

3 **Q** All right. Next requirement:

4 "Poultry waste shall only be applied to suitable
5 land at appropriate times and rates as specified
6 by the animal waste management plan. Runoff from
7 poultry waste from the application site is
8 prohibited."

9 Did I read that correctly?

10 **A** Yes, sir, you did.

11 **Q** All right. So am I correct, sir,
12 that I read this to state that, for me as the
13 operator, my animal waste management plan will
14 tell me -- will specify the land application rate
15 -- and this rule says I cannot exceed that rate.

16 Is that -- am I right?

17 **A** That would be your interpretation.
18 That would be correct.

19 **Q** All right. Next, (D), the plan
20 shall also include the following requirements:
21 "All practices necessary to minimize movement of
22 poultry waste to watercourses shall be utilized
23 and documented within the animal waste management
24 plan."

25 This item here, is this something

1 that the plan writer determines by going to the
2 actual farm and evaluating what these practices
3 are that will minimize movement of poultry waste
4 to a watercourse?

5 **A** I can only speak to the two contract
6 Department of Agriculture soil scientists that
7 write plans. The answer is yes, I believe NRCS
8 personnel do, but I have not accompanied them.

9 **Q** All right. Subsection (E): "Edge
10 of field, grassed strips shall separate
11 watercourses from runoff which may be carrying
12 eroded soil and poultry waste."

13 Can you explain in layman's term
14 what this means -- "edge of field, grassed
15 strips"? What is that?

16 **A** If the edge of the field where
17 they're applying poultry waste is close to a body
18 of water, then there needs to be some type of
19 vegetation -- in this case, it refers to grassed
20 strips -- that will do some filtering out, and
21 hopefully if there's runoff, that will not get to
22 waters of the state. Grassed strips can reduce
23 that, not always eliminate that.

24 **Q** Will the plan, itself, describe this
25 grassed strip, as far as the width that has to be

1 maintained or the setback that is required?

2 **A** In some of the plans, it does
3 specify the width. In some of the plans, it does
4 not specify the width.

5 **Q** Have you heard the -- ever heard the
6 term "buffer strip" before?

7 **A** Yes, sir.

8 **Q** Is a buffer strip equivalent to what
9 we're talking about here -- these grassed strips?

10 **A** Sure. In my opinion, a buffer strip
11 is a vegetative strip that will serve as a buffer
12 to hopefully reduce the amount of runoff that
13 could get to waters of the state.

14 **Q** All right. Let's look at (E) --
15 excuse me -- (F): "Poultry waste application
16 shall be prohibited on land subject to excessive
17 erosion."

18 You agree that's a requirement of an
19 animal waste management plan?

20 **A** That's a requirement, and it is as
21 you read it, yes.

22 **Q** All right. (G): "Land application
23 rates of poultry waste shall provide controls for
24 runoff as appropriate for site conditions."

25 You agree that that's a requirement

1 of animal waste plans?

2 **A** Yes. As you read it, it is.

3 **Q** The animal waste management plan
4 that provides the land application rates is also
5 supposed to identify what controls to prevent
6 runoff are to be utilized by the operator;
7 correct?

8 **A** It lists that in the plan, that is
9 correct.

10 **Q** All right. And those criteria for
11 management of the poultry waste are based upon
12 what is appropriate for that specific site;
13 correct?

14 **A** There -- yes, they are site
15 specific.

16 **Q** All right. Let's look at -- well,
17 excuse me. We just went through this list here,
18 (A) through (G).

19 Would you agree that (A) through (G)
20 are best management practices?

21 **A** I would agree those are some best
22 management practices that can be utilized.

23 **Q** (A) through (G) are best management
24 practices that ODAFF has established and placed
25 in its rules; correct?

1 **A** Yes. They are some of the best
2 management practices.

3 **Q** Are there other best management
4 practices that ODAFF has placed in its rules?

5 **A** There are other best management
6 practices that are part of the -- some of the
7 animal waste management plans, that are even
8 beyond what is here. This is an executive
9 summary of what's in the rules, but there are --
10 even it goes a little bit further I believe in
11 some cases.

12 **Q** Some are actually in the NRCS Code
13 590.

14 Agree?

15 **A** Yes. Another -- another source. I
16 believe there's others, but another source, yes.

17 **Q** So by the reference we talked about
18 a moment ago, those BMPs in the NRCS 590 are also
19 in the rules by incorporation?

20 **A** Most of them are, yes.

21 **Q** All right. Subsection (b): "The
22 animal waste management plan shall also include a
23 method for the disposal of carcasses."

24 You agree with that?

25 **A** Yes. The way you read it is the way

1 Plus two more sentences are there,
2 about wetness, and mentions highly vulnerable
3 groundwater again.

4 Q Okay. So for Mr. Saunders, I have
5 -- in this animal waste management plan, I have
6 some criteria that address all of my fields, that
7 address areas near streams, ponds, water wells,
8 and I have criteria here that address my steep
9 sloping land, and to address my land that is
10 seasonally wet.

11 I have something to refer to in this
12 plan, as far as telling me how to handle my
13 poultry waste related to those lands; correct?

14 A That is correct.

15 But it's only based upon this animal
16 waste management plan document. There are more
17 regulations than just the plan.

18 Q Under the statutory program, as well
19 as the plan, the registered poultry feeding
20 operators are required to maintain records of the
21 disposition of the poultry waste generated on
22 their farms; correct?

23 A Yes.

24 Q And if they land-apply it on their
25 own land, they're supposed to record that;

1 correct?

2 **A** Yes.

3 **Q** Is that one of the items that your
4 inspectors check when they come out to the farm?

5 MR. GARREN: Object to the form.

6 **Q** (BY MR. McDANIEL) To see that it's
7 been documented?

8 **A** During a annual inspection, and
9 possibly on other inspections, our inspectors,
10 when they fill out their annual inspection
11 checklist, that's one of the items there they
12 should check, and are furnished that by the
13 poultry operation.

14 **Q** All right, sir. Let me ask you to
15 turn back to the soil test reporting. If you
16 want to look at the Bates number at the bottom of
17 the page in the Saunders packet, the last three
18 digits are 192.

19 **A** I'm there.

20 **Q** All right. And this is an OSU soil
21 test report for field number 3 for Al Saunders.

22 Do you agree?

23 **A** I agree with that, yes.

24 **Q** And if I'm reading this correctly,
25 it shows the phosphorus tested to be 65; correct?

1 of waste per year, that is correct.

2 Q All right. Now, if the -- if the
3 violation is by a facility owner and that owner
4 is a contract poultry grower, it is that contract
5 poultry grower that's subject to the fine or
6 penalty, not that grower's integrator; correct?

7 MR. GARREN: Objection. Calls for a
8 legal conclusion or opinion.

9 THE WITNESS: Our practice is
10 compliance issues pertaining to registered
11 poultry operations. There are others that we
12 haven't talked about -- applicators -- but
13 registered poultry operations is your question.

14 The letter goes to the registered
15 poultry operation, with a compliance copy of the
16 letter going to the integrator.

17 Q (BY MR. McDANIEL) All right. If the
18 circumstance was that -- let's say there was an
19 administrative penalty assessed, a financial
20 penalty for a violation at that facility, and
21 that facility is owned and operated by a contract
22 poultry grower.

23 ODAFF looks to that contract poultry
24 grower to pay that penalty, not the integrator
25 with whom they contract.

1 Is that a true statement?

2 **A** Yes. Based upon your scenario you
3 just laid out.

4 **Q** All right. Does ODAFF have the
5 power under its rule -- excuse me.

6 Does ODAFF have the power, under its
7 rule-making powers, to change the litter
8 utilization standards in the Oklahoma portion of
9 the Illinois River watershed?

10 **A** Yes.

11 MR. GARREN: Object to form. The
12 term "use litter."

13 MR. McDANIEL: Let me rephrase.

14 **Q** (BY MR. McDANIEL) Does ODAFF have
15 the power, under its rule-making power, to change
16 the poultry Waste Utilization Standards within
17 the Oklahoma portion of the Illinois River
18 watershed?

19 **A** Yes.

20 **Q** Now, the Oklahoma legislature has
21 amended the statutes to provide for different
22 standards for land application of poultry waste
23 applicable to a specific watershed in the past;
24 right?

25 **A** Yes.

1 ultimately gets land-applied?

2 **A** For a livestock auction, the answer
3 is no.

4 **Q** How about for a dairy?

5 **A** Dairy -- if it's a licensed
6 concentrated animal feeding operation, then yes.
7 What they do with it and how they do with it and
8 where they put it, then they are required, if
9 they're a licensed concentrated animal feeding
10 operation.

11 **Q** Swine LMFO?

12 **A** LMFO.

13 **Q** LMFO.

14 **A** There are swine CAFOs, concentrated
15 feeding animal operations, that are smaller than
16 2,500 head or 55 pounds. There are LMFOs,
17 licensed management feeding operations, that are
18 swine over 2,500 head, over 55 pounds. They are
19 required to track it also. Both sets, whether
20 they're CAFO or LMFO.

21 **Q** And each of those has a waste
22 management criteria applicable to that type of
23 operation; is that right?

24 **A** Yes. They're required -- if they're
25 a licensed CAFO or licensed LMFO, required to

1 have an animal waste management plan that is part
2 of the guidance and regulations that they have to
3 adhere to.

4 Q Okay.

5 MR. McDANIEL: Do you mind sitting
6 put and letting her change the tape?

7 (Off the record from 3:50 p.m. to 3:52 p.m.)

8 Q (BY MR. McDANIEL) Mr. Parrish, I've
9 handed you Exhibit 14, which are some documents I
10 can represent to you we copied out of ODAFF's
11 records, related to an operation owned by an
12 Oscar L. Swepston in Adair County, Oklahoma.

13 Are you familiar with this
14 operation?

15 A I am familiar with this operation
16 because of the documents that you have given to
17 me that -- the latter pages of it are our
18 division. The beginning pages of it has nothing
19 to do with our division.

20 But the complaint statement,
21 WQC-04248, comes to our division, and our
22 division then is involved in conducting
23 inspections and doing enforcement.

24 But the first parts of it deals with
25 the dairy and has to do with the dairy inspectors